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IN THE

Supreme Court of the United States

October Term, 1967

637

CHAN KWAN CHUNG,

Petitioner

against

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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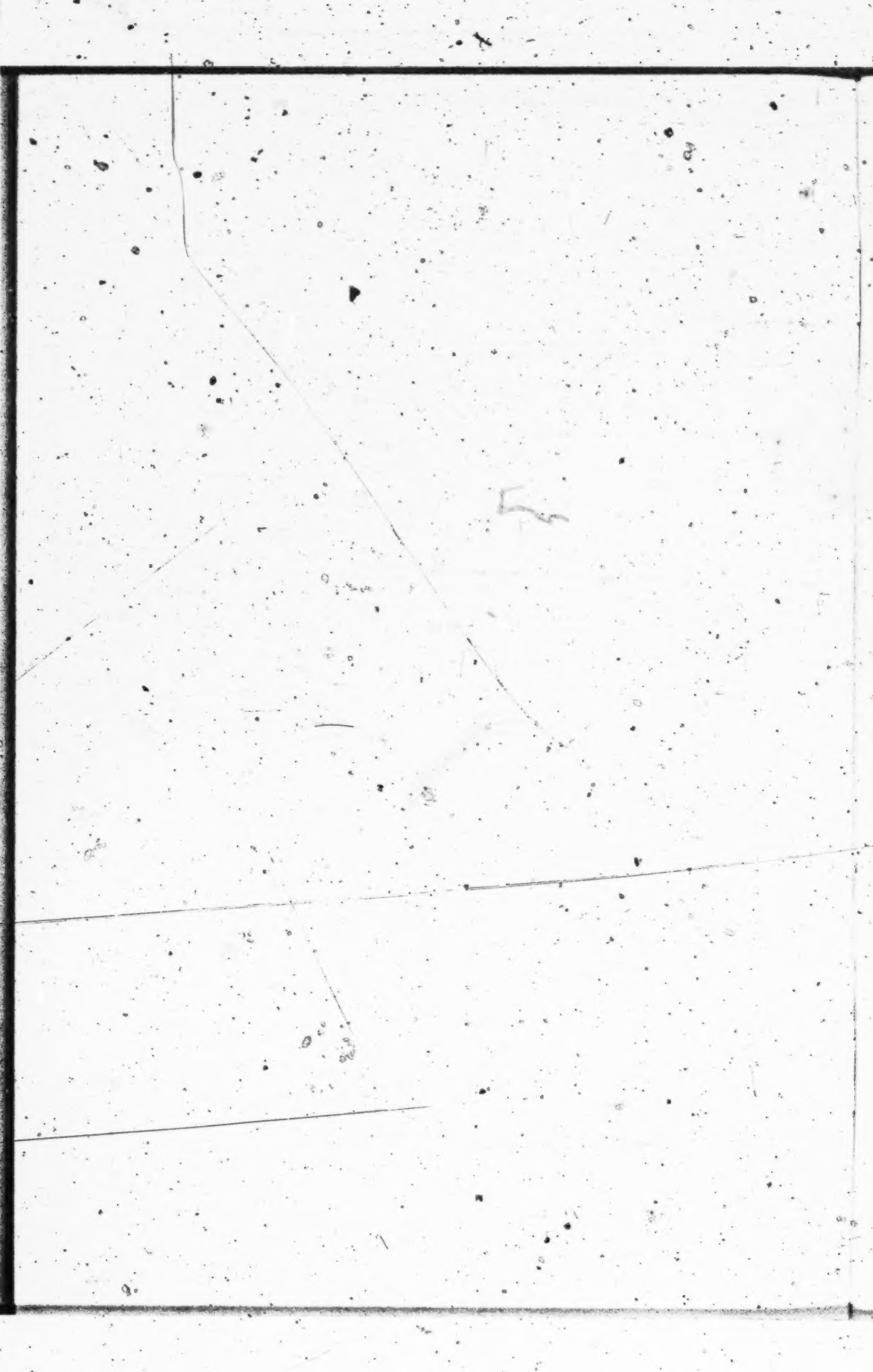

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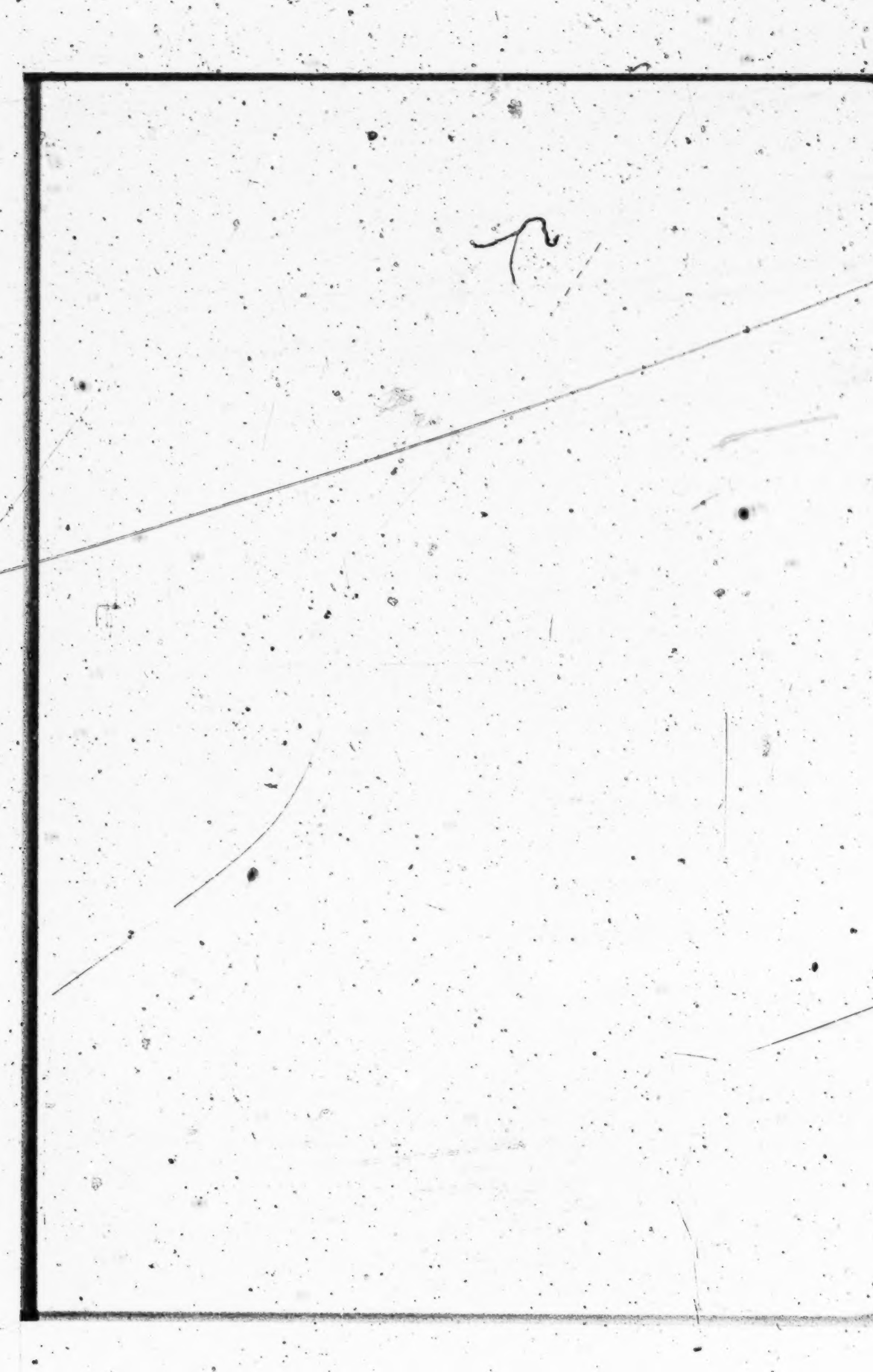

IN THE

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OCTOBER TERM, 1967

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IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit dismissing the petition to review an act of the Immigration and Naturalization Service.

Jurisdiction

The judgment of the Court of Appeals was entered on August 4, 1967. Jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Questions Involved

1. Does the United States Court of Appeals have jurisdiction over this matter?

2. Does the United States Court of Appeals have exclusive jurisdiction over all immigration matters pursuant to Section 8 U. S. C. 1105(a)?

Statute Involved

Immigration and Nationality Act of 1952, as amended:

> "Sec. 106.(a) The procedure prescribed by, and all the provisions of the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U. S. C.

1031 et seq.), shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act, . . .".

Statement

The petitioner is a native and citizen of China who entered the United States as a crewman on March 29, 1964. He has continuously resided in the United States since that date. After his entry, the alien voluntarily went to the office of the Immigration Service and he was placed under deportation proceedings in July of 1964. At that time, the only relief available to him under the immigration laws was voluntary departure but, since he lacked the funds to depart voluntarily, his application was denied. No appeal was taken to the Board of Immigration Appeals from this decision.

Thereafter, on October 3, 1965, there was a broad base amendment to the immigration laws for the purpose of liberalizing immigration to the United States. This was the first substantial change in the immigration statutes since 1952. In July of 1966 the Immigration Service notified the petitioner that he must surrender for deportation on July 7, 1966 for the purpose of being deported to Hong Kong. On July 5, 1966 the petitioner made an application to the Immigration Service to have his status adjusted to that of a permanent resident pursuant to Section 203(a)(7) of the Immigration and Nationality Act of 1952, as amended and for a stay of his deportation pending the determination of this application. On the same day, the Immigration Service denied the petitioner's application for a stay of deportation on the ground that since he entered the United States as a crewman, he was not

eligible to adjust his status in the United States pursuant to Section 245, 8 U. S. C. 1255.

Thereafter, a Petition for Review was filed with the United States Court of Appeals for the Third Circuit pursuant to Section 8 U. S. C. 1105(a) praying for an Order declaring that the petitioner is entitled to apply for the adjustment of his immigration status pursuant to Section 203(a)(7) of the Immigration and Nationality Act of 1952, as amended; that he is statutorily eligible for such relief; for an Order declaring that the regulations barring the petitioner from such relief, be set aside as being illegal and void, and, for an Order declaring that the denial of an Application for a Stay of Deportation was improper.

On August 4, 1967, the Court below dismissed the petition for lack of jurisdiction without going into the merits of the case.

Reasons for Granting the Writ

The decision below raised a substantial question of law as to the meaning of Section 8 U. S. C. 1105(a). The Court's opinion brings to the fore the difference in the interpretation of this difficult section of the law that exists in the different Circuits of the United States. There have been a number of cases dealing with jurisdiction that have been decided differently in different Circuits. The Second Circuit in a similar type of case found jurisdiction was properly in the District Court, *Tai Mui* v. *Esperdy*, 371 F. 2d 772 (C. A. 2, 1966), cert. denied, — U. S. — (1967). The Seventh Circuit has, apparently, come to a different determination wherein it held that any administrative determination that involves the execution or suspension of the deportation order is ancillary to that order and is reviewable in the Court of Appeals. *Melone* v. *INS*, 355 F. 2d 533 (C. A. 7, 1966); *Skiftos* v. *INS*, 332 F. 2d 203 (C. A. 7, 1964). The Sixth Circuit also appears to have adopted that construction of the Act. *Televera* v. *Pederson*,

334 F. 2d 52 (C. A. 6, 1964). The Fifth and Eighth Circuits agree with the Second and Third Circuits. *Samala* v. *INS*, 336 F. 2d 7 (C. A. 5, 1964); *Mendez* v. *Major*, 340 F. 2d 128 (C. A. 8, 1965). Prior to the determination in this matter, different determinations were made in the District Court in New Jersey. (See p. 5 of Opinion.)

The problems that exist in this matter were very clearly stated in the Court's opinion. In addition to that, the problems of the jurisdiction of these matters were discussed thoroughly in the case of *Tai Mui*.

From all of the foregoing, it can readily be seen that the situation with reference to Section 8 U. S. C. 1105(a) is a muddy one and judges and lawyers can only look to the Supreme Court to clarify the law to have it interpreted uniformly throughout the United States. With the substantial conflict existing throughout the country with reference to the jurisdiction on immigration matters, it is imperative that the Supreme Court grant certiorari in this case so that the matter can be clarified.

CONCLUSION

Wherefore, in consideration of the magnitude of the questions presented, and in the interest of justice, it is respectfully prayed that a Writ of Certiorari issue to the United States Court of Appeals for the Third Circuit.

Dated: New York, New York
September 15, 1967.

Respectfully submitted,

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Opinion of the Court

(Filed August 4, 1967)

By STALEY, *Chief Judge.*

These proceedings were commenced in this court to review decisions of the district director of the Immigration and Naturalization Service in Newark, New Jersey. The district director had denied petitioners' applications for stays of deportation pending disposition of their applications for adjustment of status pursuant to § 203(a)(7) of the Immigration and Nationality Act (hereinafter referred to as the "Act"), 8 U.S.C. § 1153(a)(7) (Supp. II, 1966).

The petitioner in No. 16027, Chan Kwan Chung, a citizen of China, entered the United States on March 29, 1964. As a crewman, he could remain in this country only as long as his vessel was in port but not in excess of 29 days. 8 U.S.C. § 1282(a). He remained longer than permitted, and deportation proceedings were commenced against him in July of 1964.[1] Chung apparently conceded his deportability but sought permission to depart voluntarily. His request was denied. No appeal was lodged with the Board of Immigration Appeals.

Chung was ordered to surrender for deportation to Hong Kong on July 7, 1966. On July 5, two days before he

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[1] The facts in the Kwok case, No. 16005, are similar: Cheng Fan Kwok, a citizen of China, entered the United States as a crewman on November 24, 1965. He was ordered deported on May 16, 1966, and was granted permission to depart voluntarily. He did not depart voluntarily and was ordered to surrender for deportation on June 20, 1966. On that date, he filed an application with the district director for a stay of deportation pending the submission of an application for adjustment of status under §203(a)(7). The application for a stay was denied.

was to be deported, he filed an application for a stay of deportation with the district director in Newark. The reason asserted for the stay was to permit him time to submit an application for adjustment of status pursuant to a recent amendment to the Immigration and Nationality Act, § 203(a)(7). The district director denied the application, stating that under the published regulations of the Service, 8 C.F.R. § 245.4, adjustment of status under § 203(a)(7) is governed by § 245 and that crewmen are excluded from adjusting their status under § 245.

Two issues are presented by these petitions for review. The first is whether this court has jurisdiction to entertain the petitions, and the second is whether crewmen are eligible to adjust their status under § 203(a)(7). We deal first with the question of jurisdiction since a decision on this point adverse to the petitioners would render unnecessary a consideration of the merits of each petition.

Both the petitioners and the Immigration and Naturalization Service urge that this court has exclusive jurisdiction to review the district director's decisions. Our earlier decisions to the contrary in Lam Man Chi v. Bauchard, 314 F.2d 664 (C.A.3, 1963), and Scalzo v. Hurney, 314 F.2d 675 (C.A.3, 1963), should not be accorded any weight in light of our reliance on and the subsequent reversal of the Second Circuit case of Foti v. INS, 308 F.2d 779 (1962), *rev'd*, 375 U.S. 217 (1963). The statute, § 106(a) of the Act, which confers jurisdiction on the courts of appeals to review orders of deportation and exclusion provides:

> "The procedure prescribed by, and all the provisions of sections 1031-1042 of Title 5, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation * * * made against aliens within the United States pursuant to administrative proceedings under section 1252(b) of

> this title [§ 242(b) of the Act] or comparable provisions of any prior Act * * *." 8 U.S.C. § 1105a(a).

The question before the Supreme Court in the *Foti* case was whether a denial of discretionary relief under § 244(a)(5) of the Act (suspension of deportation) was a "final order of deportation" within the meaning of §106(a). Premising its conclusion on the legislative history of § 106(a) and its purpose, the Court held that the denial of § 244(a)(5) relief was reviewable in the court of appeals. The Court said that the purpose of § 106(a) was to "abbreviate the process of judicial review" by creating " 'a single separate, statutory form of judicial review of administrative orders for the deportation of * * * aliens.' " 375 U. S. at 224-25. The Court also noted that Congressmen knowledgable in immigration matters had stated in debate that a final order of deportation should include ancillary determinations such as applications for discretionary relief which were made in the same proceeding. Finally, the Court concluded that bifurcation of judicial review—review of the deportation order in the court of appeals and review of the denial of discretionary relief in the district court—was wholly inimical to the purpose of legislative history of the statute.

Though the Supreme Court in *Foti* placed considerable reliance on the fact that applications for discretionary relief are traditionally tried in one and the same proceeding with the rule to show cause why the alien should not be deported, it admitted that in a large percentage of cases deportability is conceded and that the only question before the special inquiry officer is whether the application for discretionary relief should be granted. The Court also mentioned the other types of applications for discretionary relief, in addition to those under § 244(a)(5), which would be reviewable in the courts of appeals:

> " * * * [I]t seems rather clear that all determinations made during and incident to the administrative

> proceeding conducted by a special inquiry officer, and reviewable together by the Board of Immigration Appeals, such as orders denying voluntary departure pursuant to § 244(e) and orders denying the withholding of deportation under § 243(h), are likewise included within the ambit of exclusive jurisdiction of the Courts of Appeals under § 106(a)." 375 U.S. at 229.

The Court left open the question of whether the denial of a motion to reopen the deportation proceedings is reviewable by the court of appeals. It subsequently decided that question in the affirmative in a per curiam opinion. Giova v. Rosenberg, 379 U.S. 18 (1964), *reversing* 308 F.2d 347 (C.A.9, 1962).

Since *Foti* and *Giova,* there have been a number of decisions in the courts of appeals and the district courts dealing with the jurisdictional reach of § 106(a). The Seventh Circuit has adhered to its pre-*Foti* decisions of Blagiac v. Flagg, 304 F.2d 623 (C.A.7, 1962), and Roumeliotis v. INS, 304 F.2d 453 (C.A.7), *cert. denied,* 371 U.S. 921 (1962), which hold that any administrative determination that involves the execution or suspension of the deportation order is ancillary to that order and is reviewable in the court of appeals. Melone v. INS, 355 F.2d 533 (C.A.7, 1966); Skiftos v. INS, 332 F.2d 203 (C.A.7, 1964). The Sixth Circuit also appears to have adopted that construction of the Act. Talavera v. Pederson, 334 F.2d 52 (C.A.6, 1964). The Seventh Circuit's position has, however, been rejected by the Fifth, Eighth and Second Circuits. Samala v. INS, 336 F.2d 7 (C.A.5, 1964); Mendez v. Major, 340 F.2d 128 (C.A.8, 1965); Tai Mui v. Esperdy, 371 F.2d 772 (C.A.2, 1966), *cert. denied,* — U.S. — (1967).[2]

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[2] The Ninth Circuit cases appear to be conflicting. *Compare* Fong v. INS, 308 F.2d 191 (C.A. 9, 1962), *with* Holz v. INS, 309 F.2d 452 (C.A. 9, 1962).

Conflicting interpretations of § 106(a) in the lower courts is exemplified by the division within one district court in this circuit. Judge Coolahan of the district court in New Jersey has held in Cheng Ho Mui v. Rinaldi, 262 F. Supp. 258 (D.N.J. 1966), that jurisdiction to review a district director's denial of a stay of deportation is in the district court rather than in the court of appeals. In so holding, he rejected the position taken by two of his colleagues in Wu Chun Hin v. Rinaldi, No. 402-66 (D.N.J., 1966), and Lam Ying Kwan v. Rinaldi, No. 483-66 (D.N.J., 1966).

We agree with the decision of Judge Coolahan and the position advanced by the Fifth, Eighth and Second Circuits. We do not believe that Congress by enacting § 106 (a) or the Supreme Court by construing that section liberally intended that all administrative decisions affecting the deportation of an alien should be reviewable directly and exclusively in the court of appeals. If the Supreme Court had intended that interpretation, it could have so stated in the *Foti* case; but it did not.[8]

What the court did in the Foti case was to place primary reliance on the function of the special inquiry officer to determine both the question of deportation and the availability of discretionary relief. The Court specifically noted those denials of discretionary relief which would be reviewable in the courts of appeals; and, in a footnote, the Court made, what is for us, the most telling distinction between what is reviewable here and what is not:

> "When § 106(a) was enacted, the withholding of deportation under § 243(h) was *a matter determined*

[8] The Court noted the conflict among the circuits but did not cite any case with approval. 375 U. S. at 220 & n. 3.

> *by an official other than the special inquiry officer* conducting the deportation hearing * * *. Under revised and currently effective regulations, * * * the decision on any § 243(h) request for relief which the alien might wish to make [is] * * * effected in the deportation proceedings and reflected in the final order of deportation. While *presumably denials of § 243(h) relief were not covered by § 106(a) at the time of its enactment,* it does not seem incongruous to assume that such orders, because of the change in administrative regulations making such decisions *an integral part of the deportation proceedings conducted by a special inquiry officer,* are now within the reach of § 106(a)'s judicial review provisions." 375 U.S. at 230 & n. 16 (Emphasis supplied).

Gleaned from the above, the sole determinants of review are whether the administrative decision was made by the special inquiry officer and was an integral part of the deportation proceedings conducted by him. The result in *Giova* is completely consistent with our analysis of *Foti* since motions to reopen are addressed to the special inquiry officer, 8 C.F.R. §§ 242.22, 103.5, and are part of the deportation proceedings.[4] It is therefore clear that we have no jurisdiction to review the district director's denial of petitioners' applications for stays.

Parenthetically, we note that to adopt the position urged upon us by the parties would provide a broader scope of judicial review of administrative determinations in immigration and naturalization matters than prevails in any

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[4] See Lee v. INS, 375 F.2d 723 (C.A. 9, 1967), where the court of appeals had jurisdiction to consider the merits of a case identical with the Chung case presently before us. There, the appeal arose out of a denial of a motion to reopen. See also Tai Mui v. Esperdy, 371 F. 2d 772.

other area of governmental administrative action. While it cannot be disputed that the purpose of § 106(a) was to prevent dilatory tactics frequently employed by counsel for aliens to postpone the inevitable (deportation) as long as possible, we cannot believe that to achieve this end all administrative action affecting deportation, regardless of the official responsible for it, is reviewable exclusively by this court. To say that the denial of a stay by a district director must be reviewed by this court when the regulations, 8 C.F.R., §243.4, prohibit appeal within the Service itself, is absurd. Finally, we can only add our concurrence to the Second Circuit's conclusion that new legislation is necessary to rescue the courts and lawyers from these fruitless jurisdictional disputes. Tai Mui v. Esperdy, 371 F.2d 778 & n. 3.

The petitions will be dismissed for lack of jurisdiction.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

[redacted]

No. 687 and 688

In the Supreme Court of the United States

[redacted] Term, 1967

[redacted] KWAN CHING, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

CHING F. S. KWOK, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE [redacted] CIRCUIT

[redacted] OF THE GOVERNMENT

[redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 637

CHAN KWAN CHUNG, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

No. 638

CHENG FAN KWOK, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT

1. Petitioners are natives and citizens of China who entered the United States as crewmen, remained longer than permitted and were ordered deported. Each sought from the District Director of the Immigration and Naturalization Service (in Newark, N.J.) a stay of deportation so that he could (by differing routes) apply for relief as a refugee under Section 203(a)(7) of the Immigration and Nationality Act. Petitioner in No. 637 sought the stay in order to submit an application for adjustment of status pursuant

to Section 203(a)(7). The stay was denied on the ground that adjustment of status under this section is governed by Section 245 (8 U.S.C. 1255), which specifically excludes alien crewmen. Petitioner in No. 638 sought a stay so that he could file an application under Section 203(a)(7), stating that he would depart from this country as soon as his classification was determined.[1] His application was denied on the ground that he was not eligible for the relief sought. See *Tai Mui* v. *Esperdy*, 371 F. 2d 772 (C.A. 2), certiorari denied, 386 U.S. 1017, where denials of relief to aliens in situations similar to those of the instant petitioners were upheld. See also *Wing Wa Lee* v. *Immigration & Naturalization Service*, 375 F. 2d 723 (C.A. 9), certiorari denied, October 9, 1967, No. 281, this Term.

Each petitioner then brought in the Court of Appeals for the Third Circuit a proceeding under Section 106(a) of the Act (8 U.S.C. 1105a(a)) seeking review of the order of the district director denying the stay of deportation which he had sought.[2] Both

[1] Petitioner in No. 638 lacked the two years of residence required to make application for adjustment of status in this country under Section 203(a)(7).

[2] The court of appeals granted motions submitted in behalf of these and other aliens that the decision in *Chan Kwan Chung* (No. 637) would be binding as to the cases of some 21 other alien crewmen based upon substantially the same facts, and that the decision in *Cheng Fan Kwok* (No. 638) would be binding as to some 20 other alien crewmen. In addition, in this circuit there are close to 100 petitions involving the same issue either pending or which have been dismissed (with stays of mandate entered pending this Court's determination of the instant certiorari petitions).

petitioners and the government took the position that the court of appeals had jurisdiction under Section 106(a) since the relief sought from the district director would affect the execution of the final orders of deportation which had been entered against petitioners. That court, however, adopted the view of the Second Circuit in *Tai Muï* v. *Esperdy, supra,* that review under Section 106(a) in a court of appeals lies only where the order sought to be reviewed was made by the special inquiry officer as an integral part of deportation proceedings subsequently appealed to the Board of Immigration Appeals. It therefore dismissed the petitions for review without consideration of the merits.

2. The government adheres to the view that review was properly sought in the court of appeals since the relief sought by petitioners before the Immigration and Naturalization Service would have delayed execution of final orders of deportation.

In *Foti* v. *Immigration and Naturalization Service,* 375 U.S. 217, this Court held that refusal of the Attorney General to grant suspension of deportation was reviewable in the court of appeals under Section 106(a). While that holding was confined to the narrow question presented, the Court broadly construed the legislative history of the statute as evidencing the plain objective of Congress to eliminate bifurcated judicial review, which frustrates and delays the deportation process, by giving courts of appeals exclusive jurisdiction to review denials of discretionary relief in proceedings before special inquiry officers

(375 U.S. at 224–226, 232).[3] Subsequently, in *Giova* v. *Rosenberg*, 379 U.S. 18, this Court held that orders refusing to reopen deportation proceedings (a determination not made during the proceeding determining deportability) were also reviewable in the courts of appeals.[4]

Thus, the holding in *Giova* and the rationale discussed in *Foti* seem to support the view that, at least where there is a final order of deportation, the denial by the Service of any application to vacate, suspend, or delay execution of such order is reviewable in the appropriate court of appeals under Section 106(a). That is the view of the Seventh,[5] Sixth[6] and

[3] In the *Foti* opinion, the Court stated that denials of other forms of discretionary relief, such as voluntary departure and withholding of deportation, were reviewable by the courts of appeals as well, but noted that they involved "determinations made during and incident to the administrative proceeding conducted by a special inquiry officer, and reviewable together by the Board of Immigration Appeals" (375 U.S. at 229).

[4] It should be noted, however, that the motion to reopen involved in *Giova* had been considered and denied by the Board of Immigration Appeals incident to its review of the deportation order, and not by a district director. This was pointed out by the Second Circuit in *Tai Mui* v. *Esperdy*, 371 F. 2d at 776, in distinguishing *Giova* from the situation there involved, with respect to the applicability of Section 106(a).

[5] The Seventh Circuit holds that courts of appeals have exclusive jurisdiction over any administrative action which is "ancillary to" a deportation order. *Skiftos* v. *Immigration and Naturalization Service*, 332 F. 2d 203 (C.A. 7); *Melone* v. *Immigration and Naturalization Service*, 355 F. 2d 533 (C.A. 7); *Roumeliotis* v. *Immigration and Naturalization Service*, 304 F. 2d 453 (C.A. 7), certiorari denied, 371 U.S. 921. Cf. *Martin* v. *Gardner*, 378 F. 2d 352 (C.A. 7).

[6] See *Talavera* v. *Pederson*, 334 F. 2d 52 (C.A. 6), taking jurisdiction where a special inquiry officer had denied to an

Fourth[7] Circuits. A more restrictive view—that only matters determined by a special inquiry officer and subject to review by the Board of Immigration Appeals are within the purview of the statute—has been taken by the Second and Ninth Circuits.[8] That, of course, is also the view adopted by the court below (see Pet. App. 10). This view is based upon certain language in the *Foti* opinion which repeatedly noted that the order there reviewable was made in the course of a Section 242(b) proceeding to determine deportability (see, *e.g.*, 375 U.S. at 222–223, 226, 228, 229–230, 231). That language need not be regarded as dispositive of the

alien, subsequent to an order of deportation, the discretionary relief of voluntary departure and the waiver of requirements for reentry. Cf. *Kirsten-Sanders Dental Laboratory, Inc.* v. *Sahli*, 348 F. 2d 442 (C.A. 6).

[7] See *Rose* v. *Woolwine*, 344 F. 2d 993 (C.A. 4), taking a very expansive view of court of appeals' jurisdiction to review deportation proceedings.

[8] See *Tai Mui* v. *Esperdy*, *supra*; *Yamada* v. *Immigration and Naturalization Service*, No. 21,049, C.A. 9 (decided 10/17/67), where the Ninth Circuit suggested that a change in the pertinent regulations was the appropriate way to resolve the existing problem. Although the court below viewed certain decisions of the Eighth and Fifth Circuits as being to the same effect as that of the Second Circuit, neither of those courts appears to have taken a view necessarily contrary to that urged by the government here. In *Mendez* v. *Major*, 340 F. 2d 128 (C.A. 8), no deportation order was involved; what was sought was a waiver of the requirement that an alien admitted for study reside in a foreign country for two years before applying for reentry. And, while an order of deportation had been entered in *Samala* v. *Immigration and Naturalization Service*, 336 F. 2d 7 (C.A. 5), the court there treated as entirely separable from the deportation proceedings a similar application for relief from the reentry requirements. Thus, in neither case did the application for relief from reentry requirements affect an order of deportation.

question whether the scope of appeals' jurisdiction is limited to similar situations. Rather, it can and, we submit, should be read as simply reflecting the factual context there presented.

Apart from *Foti,* a consideration of the language of Section 106(a) itself discloses support for both a narrow and a broad view of court of appeals' jurisdiction to review deportation proceedings. On the one hand, the statute specifies that such judicial review relates to deportation orders made "pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act * * *" (8 U.S.C. 1105a(a)). On the other hand, the statute provides that this procedure shall be "the sole and exclusive" one for "the judicial review of all final orders of deportation * * * made against aliens in the United States * * *" (*ibid.*). Since the language can be construed either way, it is thus necessary to turn to the legislative history and to the background of the legislation to determine the congressional intent.

It seems clear that the central purpose underlying the enactment of Section 106(a) was to avoid the delays inherent in the bifurcated system of judicial review which had existed previously (see 375 U.S. at 224–226). Deportation is frequently conceded, and the bulk of judicial review presently relates to determinations involving discretionary relief. A wide variety of types of discretionary relief is now available to an alien who has been ordered deported, and many aliens seek review concurrently of determinations by both a district director and a special inquiry officer. Moreover, the same sort of relief may be

sought in different ways. For example, in *Wing Wa Lee* v. *Immigration and Naturalization Service, supra,* the alien sought the same basic relief as the petitioner in No. 637—adjustment of status as a refugee—but did so by means of a motion to reopen the deportation proceedings so as to permit the application. The refusal to grant relief on the ground that the alien was ineligible for such relief was clearly reviewable—and was reviewed—in the court of appeals, under *Giova* v. *Rosenberg, supra.* Any ruling which makes jurisdiction to review depend on the particular method by which discretionary relief is sought will inevitably result in legal jockeying for purposes of delay. Such a result would thus seem to depart, in our view, from the basic congressional purpose in enacting Section 106(a).[9]

In any event, the statutory construction question is one which plainly requires resolution by this Court.[10] In light of the existing conflict among circuits on the scope of their jurisdiction under Section 106(a) and the resulting confusion and delay in judicial review of orders of the Immigration and Naturalization Serv-

[9] We recognize that acceptance of the view that review of denials of relief affecting any alien under a deportation order lies in the courts of appeals might have the effect of increasing the docket of at least some of those courts in a significant way. That of course is a factor which should be considered in determining what Congress intended in enacting Section 106(a); we do not view it as determinative.

[10] We realize that the lack of adversity between parties might concern the Court in the instant cases. We note, however, that a similar situation existed in the *Foti* case, and there an *amicus curiae*, the Association of Immigration and Nationality Lawyers, came forward to support the position contrary to that

ice, we join petitioners in urging that this Court grant the petitions for writs of certiorari for the purpose of resolving the jurisdictional issue.[11]

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BEATRICE ROSENBERG,
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NOVEMBER 1967.

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of the petitioner and the government (see 375 U.S. 217). A similar development might be expected here, should the Court grant certiorari. Alternatively, the Court might consider the possibility of appointing an *amicus curiae* to represent the view expressed by the court below (see *Granville-Smith* v. *Granville-Smith*, 349 U.S. 1, 2).

[11] Our acquiescence in certiorari should not be regarded as indicating any view on the merits of the relief sought by petitioners. Indeed, we believe that the district director properly denied the stays sought by petitioner and correctly concluded that they were ineligible for the relief sought (see *supra*, p. 2).

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

CHAN KWAN CHUNG v. IMMIGRATION & NATURALIZATION SERVICE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 637. Decided June 17, 1968.

PER CURIAM.

The judgment is affirmed.